IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4412 of 2000

with

CRIMINAL MISC.APPLICATION No 4413 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRANJANBHAI RATILAL SHAH

Versus

UMANG SUMATILAL SHAH

Appearance:

1. Criminal Misc.Application No. 4412 of 2000
   MR KAMLESH B MEHTA for Petitioners No. 1-2
   NANAVATI ASSOCIATES for Respondent No. 1
   NOTICE SERVED for Respondent No. 1
   MR PANCHOLI Ld. APP for Respondent No. 2
2. Criminal Misc.Application No. 4413 of 2000
   MR KAMLESH B MEHTA for Petitioner No. 1
   NANAVATI ASSOCIATES for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/03/2002

COMMOM ORAL JUDGEMENT

Heard learned counsel Mr. KB Mehta for the petitioner in both these applications.

When this matter was taken up for final hearing on 20.2.2002, it was submitted by the learned counsel appearing for the Original complainant Mr. Prabhav Mehta for Nanavati Associates that on the date of issuance of cheques, the present petitioner-Premilaben Niranjanbhai Shah was holding joint account with her husband Niranjanbhai Ratilal Shah and the cheque was issued against the obligation of liability of both of them from the said joint account. It was submitted that this is an incident that the husband has signed the cheque and not the petitioner-wife. It was submitted by Mr.. Mehta that if the account has been opened and operated only by husband, even then the complainant may have a good case to argue and the proceedings against the present petitioner should not be quashed. It would be proper for this Court to quote the order passed by this Court on 20.2.2002 for the sake of brevity and convenience:

"Mr. KB Mehta learned counsel for petitioner is heard. During the course of oral submissions, Ld. Counsel for Ori. complainant Mr. Mehta for Nanavati Associates submits that the respondent no. 1- ori. complainant may be given time to file an affidavit to the effect that on the date of issuance of cheque the present petitioner was holding joint account with her husband - Niranjan Ratilal Shah and the cheque was issued against the obligation of the liability of both from the said joint account. It was only an incident that husband has signed the cheque. According to Mr. Mehta even if account was opened and operated by the husband, the present respondent no. 1 may have a good case to argue. He is granted time to verify the nature of account opened and operated with Madhavpura Merchantile Bank.

SO to 27.2.2002. IR to continue till then."

Thereafter, on 27.2.2002, the matter could not be heard and the same has been listed for hearing today.

Considering the contents of both the applications

and failure on the part of original complainant to point out positively that present petitioner-Premilaben Niranjanbhai Shah was holding joint account and she could have even signed the cheques by her becomes very relevant. This goes to the root of the matter. The certificate issued by the Madhavpura Merchantile Co-Op. Bank Ltd. , Annexure-B, page-9, clearly indicates that saving bank account no. 507 is in the name of Niranjan Ratilal Shah and the same is operated by him singly. Both the cheques are issued from this account. Undisputedly, the present petitioner has not signed the cheques in question. It is not correct to say that present petitioner was also one of the signatory of the cheques in question, on the contrary, the complaint is drafted in a tricky manner and gives impression that both husband and wife were the signatories of the cheques and both the accused have handed over the cheque to the complainant. The zerox copy of the cheque Annexure-C bears two signatures, but both are of Mr. Niranjan Ratilal Shah and not of present petitioner-Premilaben.

Both these petitions on behalf of petitioner no. 1-Niranjan Ratilal Shah has been disposed of as not pressed. So, the proceedings against one of the accused can still proceed further. Mr. KB Mehta has rightly submitted that petitioner no. 1 being a drawer in view of the scheme of relevant provisions of Negotiable Instrument Act i.e. section 138 to 142 complaint and other further proceedings against present petitioner can be quashed. No legal presumption also can be drawn against present petitioner-Premilaben as provided under sec. 139 of the Negotiable Instrument Act. This is a point of sustainability of proceedings qua the present petitioner and not a defence plea. So, the submissions of Mr. Mehta is accepted.

In the result, both these applications are allowed. The Criminal Complaints filed against present petitioner-Premilaben Niranjanbhai Shah being Criminal Complaint No. 1289/98 in Cri. Misc. Appln. No. 4412/2000 and Criminal Complaint No. 1290/98 in Cri. Misc. Appln. No. 4413/2000, both pending before the Ld. Metropolitan Magistrate, Court No. 15, Ahmedabad are hereby quashed and set aside. Rule is made absolute accordingly in both the applications. DS Permitted.

(C.K. BUCH, J.)
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